IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

**CRIMINAL APPEAL NO. 629 OF 2000**

Himmatbahadur Narabahadur Thappa @ Jogi
Yeravada Central Prison,
Life Convict No. C-11421
Pune -411006. ..Appellant
(Orig.accused)

V/s

The State of Maharashtra.

Miss. Shobhana Gopal,Advocate appointed, absent.

Mrs. U.V. Kejriwal, A.P.P. for the State.

**CORAM : V.G.PALSHIKAR &**
**ANOOP V.MOHTA, JJ.**

**DATE : 17TH SEPTEMBER, 2004.**

ORAL JUDGMENT (PER ANOOP V. MOHTA, J.).

. A father has strangled and hanged his own minor son on the tree, therefore, convicted under section 302 of Indian Penal Code. The appellant-accused has challenged the said order of conviction.

2. None for the appellant. The matter was on board of final hearing. Instead of dismissing the matter in default, as accused is in jail since long, we have decided to hear such matters, as appellant should not suffer or wait again for restoration and hearing of the

matter. We have heard Mrs Kejriwal, A.P.P., for the State. We have gone through the record and contentions raised in the memo of appeal with the assistance of Mrs. Kantharia, A.P.P. After considering the testimony of all the witnesses and after re-appreciating and re-weighing the said testimony and based on the grounds raised, in the appeal, as well as, as raised by the A.P.P. we are of the view that the order of conviction passed by the Additional Sessions Judge, Kalyan in the present case needs interference. We are therefore, allowing this appeal and setting aside the order of conviction and sentence dated 26/5/2000 on the following facts and reasons. The dead body of Master Puppy, aged 7 years was found hanged on a tree. The Police Patil therefore, lodged the first information report in the evening of 20.5.1997. A crime was accordingly, registered. The prosecution case is that the accused, the father of the deceased was suspecting the character of his wife and therefore, doubted the paternity of his deceased son. On this suspicion, as per the prosecution, the accused had killed his son and hanged him on a tree, some time after 11 p.m. of 19/5/1997 and or before 5.30 p.m. of 20/5/1997. The spot panchanama shows that the boy was hanged on a tree by a shirt. The

shirt was tied around the neck. The body was brought down. The inquest panchanma of the corps, Exh.13 was recorded. The dead body was sent for the autopsy. The panchanama of occurrence was drawn, Exh.15. The Medical report shows that the death was due to asphyxia due to strangulation. After enquiry, investigating officer learnt, that the said deceased son was missing, since the night of 19/5/2000. The accused beaten the deceased son. Therefore, this minor son ran away from the house in the night of 19/5/2000. As per the police, the death was not suicidal but it was homicidal, therefore, the report was lodged and the offence was registered under Section 302 of I.P.C. The statements were recorded. The accused was arrested on 24/5/1997 only because, the accused was alleged to be absconding from 21/5/1997.

3. The prosecution has examined 5 witnesses. There is no eye witness to the incident. No witness examined by the accused. The trial commenced further as the accused has denied the charges and expressed innocence. The learned Judge therefore, based on the material placed on the record and based on the circumstantial evidence, convicted the accused for the offence.

4. There regular beating and or was shouting by the father. there was regular quarrel between appellant-accused and his wife. There was suspicion in the mind of accused about the paternity of the son by itself cannot be the reason to believe the case of the prosecution for want of direct evidence, as well as circumstantial evidence that the appellant-father has killed his own son.There was nothing to link the commission of this offence so far as appellant is concerned. The death of son definitely witnessed by the parents but the story of prosecution that appellant-accused had killed his own son raises various doubts for want of linking evidence.

5. The prosecution case about the motive to kill his own son, because he was raising doubt about his son’s paternity, quarrelling with his wife and was in habit of drinking liquor, according to us this itself cannot be the reason to convict the accused for the offence of killing his own son.

6. The learned Judge while convicting the accused relied basically on the history that the accused was used to assault Geetabai and deceased Puppy. The

accused was doubting the chastity of Geetabai. Geetabai at the relevant time had left the premises and not seen or heard by any person in that area. Her whereabouts were not known to anybody despite their efforts. The prosecution is unable to secure her presence. The lower Court observed that this conduct and behaviour of Geetabai mother of the deceased appears to be very natural because of the death of Puppy. It was further observed that there was nothing for her to continue to stay with the accused at a place, where she has lost her son. In our view, this itself cannot be the reason to blame the accused, as done in the present case.

7. There is an evidence on the record that the son used to run away from the accused as he used to beat him. The said Puppy hidden himself behind a cement pipe. P.W. 1 Dwarkaprasad further deposed, that he saw the wife of accused was approaching to the hut with a basket containing eatables. Accused was following his wife. The wife of the accused was calling accused for meals, but the accused did not go for the meals. Next morning the wife of the accused told him that her son was not traceable. In the morning the accused was consuming the liquor. The police has directed P.W. 1

to keep the watch on the accused but absconded. In the night of 19/5/1997 there was quarrel between wife and accused, thereafter he left for consuming liquor. The accused was absconding since morning of 21/5/1997. P.W. 2 Alka Jadhav also deposed that accused was in habit of consuming liquor and he used to assault his son. The accused also used to beat them by throwing stones. The accused also saying that Puppy is not his son and therefore, he was assaulting Puppy. She deposed that in the fateful night the accused consumed liquor and he was saying that he will set on them fire. The next day she learnt that Puppy was hanged to a tree. The distance from the hut and the place of hanging is of 15 minutes by walk. P.W. 3, Kisan Thappa son of the accused from earlier wife deposed that accused had killed his first wife in the house, however, the offence was not registered. He also deposed that he was in habit of consuming liquor. P.W. 5, P.S.I. Mr. Ramvanshi supports the case, so far as, the investigation and recovery of the body and panchanama and the death of deceased by the strangulation.

8. According to us, all these testimony, nowhere proved that the accused was in the picture at the

relevant time. Except his behaviour or conduct or his habit of drinking liquor and raising doubt about suspicion of paternity. There is no link to demonstrate that the accused personally strangulated his son and hanged his son and killed him. Unfortunately, it is difficult to deny the death of minor son. However, there is no direct link of the accused to commit this murder, as alleged.

9. We are therefore, of the view that the present conviction is unsustainable based on the circumstantial evidence. The appeal is allowed. There is substance in the appeal. We therefore, quash and set aside the order of conviction and sentence dated 26/5/2000 and acquit the accused on all counts. The accused be released, if not required in any other offence, immediately.

10. Appeal is allowed accoridngly.

**[ V.G. PALSHIKAR, J.]**

**[ANOOP V. MOHTA, J.]**